

Remarks

Claims 1-20 were in the application as examined. Applicant now amends claims 1, 14, and 20 and adds new claim 21. No new matter is added to the claims or to the specification. Further consideration and examination is respectfully requested.

Rejections under 35 U.S.C. §112

Claims 14-20 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. According to the Examiner, the term “the panels” has multiple antecedent bases. Applicant has amended claim 14 to clarify which panels are referred to. Also, according to the Examiner, claim 20 did not appear to further limit the scope of claim 14 from which it depends. Claim 20 has been amended to clarify that it defines a flat perform where two panels are connected. In this condition, the carton is more than a blank but is not yet erected, i.e., in a flat condition for bulk shipment and storage. With these amendments, the rejection should be withdrawn.

Rejections under 35 U.S.C. §102

Claims 1-3, 5, 12-14, and 20 stand rejected under 35 U.S.C. §102 as being anticipated by the Spivey et al. patent. The rejections are traversed.

The Spivey et al. patent discloses a foldable paperboard carton for holding and dispensing cans and bottles of the types used to contain soft drinks, beer and the like (Col. 1, line 57 – Col. 2, line 1). What the Examiner refers to as “display panels” 68, 70 are identified in the Spivey et al. patent as side exiting end flaps in the exiting end of the carton. A dispensing flap 76 is attached to side panels 12, 14 by optional gusset straps 80, 82 that serve to prevent the dispensing flap 76 from tilting below the plane of a refrigerator shelf (Col. 3, line 58 – Col. 4, line 6).

With respect to claim 1, the Spivey et al. patent does not disclose a display panel. The exiting panels 68, 70 of the Spivey et al. patent display nothing; rather they serve to bar the accidental exit of beverage cans or bottles from the carton by providing container restraining flaps 122, 124 (Col. 5, ll. 32-40). Thus, claim 1 is not anticipated by the Spivey et al. patent.

And because claims 2, 3, 5, 12, and 13 all depend from claim 1, they are likewise not anticipated.

Moreover, with respect to claim 3 the Spivey et al. patent does not disclose securing the closure panel to another panel in the open position. Rather the Spivey et al. patent discloses the dispenser flap being folded open, but unsecured. Paragraph 44 of the application explains that the closure panel is folded back over the adjacent top panel and *secured thereto*. In the subject invention, Figs. 9-15 show one way that the closure panel is secured to the top panel.

With respect to claim 5, the Spivey et al. patent does not disclose the closure panel covering both the display panel and the opening. Even if the side exiting end flaps of the Spivey et al. patent were to be considered a display panel, it is clear that the dispensing flap 76 does not cover both the opening and the side exiting end flaps in the closed position. It covers only the opening.

With respect to claim 12, the Spivey et al. patent does not disclose full overlap panels on the first end.

With respect to claim 13, the Spivey et al. patent does not disclose a display panel having a bottom portion and two side portions. Applicant's invention has two side panels 34, 36 and a securing bottom panel 44 that together form the display panel.

With respect to claim 14, the Spivey et al. patent does not disclose a blank having the second end of four panels other than the one having a closure panel extending therefrom, having a display panel extending therefrom. Claim 14 covers the blank shown in Fig. 6 of the application. The Spivey et al. patent discloses five panels (not four), and the side exiting panels 68 and 70 extend from two of them. Thus, claim 14 is not anticipated by the Spivey et al. patent.

With respect to claim 20, the Spivey et al. patent does not disclose a preform where the first panel side flap is mounted to the second panel. Fig. 1 shows only a blank, and nothing where any of the panels is connected to another. Thus claim 20 is not anticipated by the Spivey et al. patent.

Allowable Subject Matter

Applicant acknowledges with thanks the Examiner's determination of the allowability of

Applicant: John L. Anderson
Serial No.: 10/709,855
Page 8 of 8

Docket No.: 71351-0034
Filed: June 2, 2004

the subject matter of claims 4, 6-11, and 15-19. However, given the apparent allowability of the remaining claims, it is believed that no amendments to these claims are needed to establish patentability.

Nor does the Spivey et al. patent render new claim 21 unpatentable. Claim 21 calls for a combination shipping and display container with a closure panel that covers both the display panel and the opening in the closed position. The Spivey et al. patent does not disclose a combination shipping and display container. It is certainly not a shipping container; it is too flimsy. Moreover, the Spivey et al. patent does not disclose a closure panel that covers both a display panel and the opening. The Spivey et al. patent does not render claim 21 unpatentable.

Inasmuch as all claims are now believed to be in condition for allowance, prompt notice of allowability is respectfully requested. Any questions about the foregoing can be directed to the undersigned and the Examiner is invited to resolve any remaining issues by telephone or by email.

Respectfully submitted,

JOHN L. ANDERSON

Dated: March 28, 2006

/Joel E Bair/

Joel E. Bair, Reg. No. 33,356
McGARRY BAIR PC
32 Market Avenue SW, Suite 500
Grand Rapids, Michigan 49503
Telephone: (616) 742-3500
Email: jeb@mcgarrybair.com

G0289525